

State of California
BOARD OF EQUALIZATION

CIGARETTE AND TOBACCO PRODUCTS TAX REGULATIONS

Regulation 4034. REPORT OF SALES TO CONSUMERS.

Reference: Sections 30105.5, 30108, 30140, 30151, 30182, 30183, 30453 and 30454, Revenue and Taxation Code.

(a) Every person engaged in business in this state who sells or solicits orders for cigarettes, the use or consumption of which is subject to the tax, must file a certified return with the board, on Board of Equalization Form BOE-501-CI entitled "Cigarette and Tobacco Products Excise Tax Return, on or before the 25th day of the calendar month following the calendar month in which the cigarettes were delivered in this state showing:

- (1) the name and address of each purchaser from whom an order was taken;
- (2) the number of cigarettes sold and delivered pursuant to each order; and
- (3) the amount of tax required to be collected from each purchaser, together with a remittance of such tax.

(b) Every person engaged in business in this state who sells or solicits orders for tobacco products, the use or consumption of which is subject to the tax, must file a return with the board as follows:

(1) If the person is required to be a licensed tobacco products distributor, he or she shall report on the tobacco products distributor's monthly certified tax return (Board of Equalization Form BOE-501-CT entitled "Tobacco Products Distributor Tax Return") the wholesale cost of all tobacco products distributed to consumers, together with a remittance of the tax due. The return shall be filed on or before the 25th day of the calendar month following the calendar month in which the tobacco products were delivered in this state.

(2) If the person is required to be a registered tobacco products distributor, he or she shall file a certified return with the board, on Board of Equalization Form BOE-501-CTS entitled "Cigarette and Tobacco Products Tax Return," on or before the 25th day of the calendar month following the calendar month in which the tobacco products were delivered in this state showing:

- (A)** the name and address of each purchaser from whom an order was taken;
- (B)** the type, quantity, and wholesale cost of tobacco products sold and delivered pursuant to each order; and
- (C)** the amount of tax required to be collected from each purchaser, together with a remittance of such tax.

(c) Every person engaged in business in this state who, as permitted by state law and the terms of the November 23, 1998 Master Settlement Agreements with the state which are applicable to the signatories to those Agreements, makes gifts of untaxed cigarettes or tobacco products as samples by means of shipment from an out-of-state point directly to a donee in this state shall collect the tax from the donee if the donee is other than a licensed distributor and shall give the donee a receipt showing the name and place of business of the donor, the name and address of the donee, the number of cigarettes donated, and the amount of tax required to be collected, or the type, quantity and wholesale cost of the tobacco products donated and a statement indicating that the tobacco products tax has been paid.

Each package of sample cigarettes shall have imprinted on it: "Not for Sale. Applicable state tax has been paid." and each package of sample tobacco products shall be clearly marked as a sample.

Donors of sample cigarettes shall notify the board in writing in advance of the shipment of the cigarettes into the state giving information as to the approximate date or dates, location or locations, brand, and the method of shipment into the state. Each donor of cigarettes and tobacco products shall file a return with the board on or before the 25th day of the calendar month following the calendar month in which the cigarettes or tobacco products were delivered in this state showing the number of cigarettes shipped into the state or the type, quantity and wholesale cost of the tobacco products and the amount of tax required to be collected from each donee, together with a remittance of such tax.

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(d) The taxes required to be collected constitute debts owed by the distributor, or other person required to collect the taxes, to this state.

(e) “Engaged in business in the state” means and includes any of the following:

(1) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business.

(2) Having any representative, agent, salesperson, canvasser or solicitor operating in this state under the authority of the distributor or its subsidiary for the purpose of selling, delivering, or the taking of orders for cigarettes.

(f) The requirements of this regulation do not apply to those distributions of federally tax-free cigarettes or tobacco products which are exempt from tax under Section 30105.5 of the Revenue and Taxation Code.

History: Adopted June 24, 1959.

Amended January 12, 1968.

Amended October 10, 1968, effective November 13, 1968.

Amended April 11, 1972, effective May 14, 1972.

Amended September 26, 2001, effective February 15, 2002. Added “engaged in business in this state” after “Every person” and deleted “file reports with the board as follows:” following “must” in subdivision (a). Deleted subdivision (a)(1), deleted subdivision (a)(2) reference and “If the person is engaged in business in this state and is required to be a registered cigarette distributor, he or she shall”, before “file a”, replaced “report or” with “certified return”, and added “, on Board of Equalization...Tax Return. Renumbered subdivision (A), (B), (C) to subdivision (1), (2), (3). Added new subdivision (b). Renumbered subdivisions (b), (c), (d) and (e) to subdivisions (c), (d), (e), and (f). In first paragraph of subdivision (c), added “who, as permitted by state law... those Agreements”, changed “and making” to “makes”, added “or tobacco products” after “untaxed cigarettes”, deleted “at the time of making the gift, or, if the donee is not then obligated to pay the tax, at the time the donee becomes so obligated” after “in this state shall”, and added “or the type, quantity... been paid”. In the second paragraph of subdivision (c), deleted “such” after “Each package of”, and added “and each package... marked as a sample”. In the third paragraph of subdivision (c), removed “volume of the sample” after “brand”. In subdivision (f), added “or tobacco products” after “cigarettes” and removed “to certain veteran’s institutions” before “which” and removed “distributions” after “which”. Removed gender specific language throughout regulation.